IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. .....

DIXIE ROSE NURSERY, *Petitioner,*

v.

CONWAY P. COE, Commissioner of Patents, *Respondent.*

MOTION TO PROCEED ON CERTIFIED TRANSCRIPT OF THE RECORD AND ORIGINAL EXHIBITS FOR THE PURPOSES OF PETITION FOR WRIT OF CERTIORARI AND TO DISPENSE WITH PRINTING OF EXHIBITS.

Now comes, Dixie Rose Nursery, petitioner in the above-entitled cause, and moves that petitioner be permitted to proceed, for the purposes of the annexed petition, on the certified transcript of the record and the original exhibits in the District Court and the United States Court of Appeals for the District of Columbia, in lieu of a printed record as required by Rule 38, par. 7, of the Rules of the Supreme Court.

In support of the above motion, petitioner respectfully submits that during the trial of this case in the District

Court a large number of paper exhibits were offered in evidence, said exhibits comprising over 100 printed copies of trade-mark registrations, and numerous excerpts from magazines, trade catalogs and other publications, each containing a large number of pages, many of which are in color. Accordingly, the cost of reproducing these exhibits in a printed record would be prohibitive and more than petitioner would be able to bear. For the same reasons, a motion to dispense with printing of an Appendix to petitioner-appellant's brief was granted by the Court of Appeals during the proceedings in that Court.

However, if the petition for writ of certiorari is granted by this Honorable Court, and petitioner is relieved from printing the exhibits, then and in that event, petitioner is ready and willing to print the record proper, should such be required by the Court.

Respectfully submitted,

HARRY C. ROBB,
JOHN F. ROBB,
HARRY C. ROBB, JR.,
Attorneys for Petitioner.

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DIXIE ROSE NURSERY, *Petitioner*,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Dixie Rose Nursery, respectfully prays for a writ of certiorari to the United States Court of Appeals for the District of Columbia, to review a judgment of that Court entered November 16th, 1942 (petition for rehearing denied December 23, 1942). A transcript of the record in the case, including the proceedings in said Court of Appeals, is furnished herewith in accordance with Rule 38 of the Rules of this Court.

I.

SUMMARY STATEMENT OF MATTER INVOLVED.

This case involves the construction of the Trade Mark Act of February 20, 1905 (33 Stat. 727, 15 U. S. C. A. 85, Section 5).

The subject matter of this suit is the right of registration under the above Act of petitioner's trade-mark comprising the words "Texas Centennial" imposed upon a crude map outline base approximating the outline of the State of Texas, said trade-mark being used in interstate commerce by petitioner and its licensees upon roses, scions, and cuttings.

Respondent refused registration of petitioner's trade-mark in the proceedings in the U. S. Patent Office on the ground that the trade-mark in question is the name of a particular patented variety of rose, and is therefore descriptive, and further, that because the mark includes the word "Texas" and map outline, the mark is also geographical, and, therefore, for these reasons, is unregistrable under the inhibitions of the Act of 1905.

Petitioner contended before the Patent Office that the provisions of Section 5 of the Trade Mark Act of 1905 do not prohibit registration of its trade-mark, and that the refusal to register constituted a discrimination against petitioner, in the face of the long established practice followed by the Patent Office of registering variety trade-marks, including those containing undisclaimed geographical features, used in all industries, and even in the plant industry.

Petitioner further contended that its mark was neither descriptive nor geographical and that varietal names of plants, like varietal names of other articles, are registrable irrespective of the existence of a live patent on the article. After final rejection of its application, affirmance on appeal to the Commissioner of Patents in person, and denial of a petition for rehearing, petitioner filed suit in the United States District Court for the District of Columbia, under

Section 4915 R. S.[1] to authorize the Commissioner of Patents to register its trade-mark.

Judgment was rendered by the District Court in favor of respondent, without any opinion, and this judgment was affirmed by the United States Court of Appeals for the District of Columbia on the wholly new theoretical grounds and misapplication of the rule of this Court laid down in *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169, 185, 186, and approved by this Court in *Dupont Cellophane Co., Inc.* v. *Waxed Products Co., Inc.* (C. C. A. 2), 85 F. (2d) 75, cert. den. 304 U. S. 575, and in opposition to other principles of trade-mark law established by this and other Circuit Courts of Appeals, particularly in *Menendez* v. *Holt*, 128 U. S. 514, and *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U. S. 251, all as set out in the opinion below dated November 16th, 1942, the said grounds being unsupported by the evidence adduced before the trial court, and therefore in direct opposition to the rule approved by this Court in *President Suspender Co.* v. *Macwilliam* (C. C. A. 2) 238 Fed. 159, cert. den. 343 U. S. 636, and long established practice of the Patent Office.

Petition for rehearing was denied by the Court of Appeals on December 23rd, 1942.

The Facts.

(1) On April 24, 1936, petitioner filed in the U. S. Patent Office a formal application for registration of its trade-mark, alleging commencement of use of the mark in interstate commerce on November 1, 1935, as applied to roses, scions and cuttings.

(2) The Examiner of Trade-Marks rejected the application on the ground that "the words 'Texas Centennial' . . . merely indicate a variety name of a particular rose" and should, therefore, be disclaimed (Pl. Ex. #1, Paper #1, p. 3). The Examiner further held, moreover, that the words were "the name of a patented article" (Pl. Ex. #1,

[1] R. S. 4915, U. S. C. A., Title 35, Section 63.

Paper #10, p. 42), and the registration would, therefore, "tend to extend a monopoly" (Pl. Ex. #1, Paper #8, p. 27).

(3) Upon final rejection of the application for registration on the foregoing grounds (Pl. Ex. #1, Paper #12, p. 47), petitioner appealed to the Commissioner of Patents in person, who, by decision of the Assistant Commissioner, overruled the rejection of the Examiner so far as based upon the ground that registration should be refused because the rose was patented (Pl. Ex. #1, Paper #19, pp. 63-65), but affirmed the Examiner's refusal to register on the ground that the words "Texas Centennial" as used upon the goods, are devoid of trade-mark significance because employed as a variety name and listed as such in petitioner's catalogs (Pl. Ex. #1, Paper #19, p. 64).

(4) As a new ground of refusal of registration, after close of the prosecution of the application for registration, the Assistant Commissioner further held that the word "Texas" and shape outline of the State of Texas are geographical "and therefore disclaimer on that ground would be required even were the mark otherwise unobjectionable" (Pl. Ex. #1, Paper #19, p. 65).

(5) In connection with the contention of the petitioner that its mark should be registered on the same basis that other variety trade-marks had been registered for many years in virtually all classes of goods, the Assistant Commissioner ruled ". . . that the registrability of trade-marks for plants should be determined upon precisely the same considerations as those that govern the registrability of trade-marks for any other articles of commerce." (Pl. Ex. #1, Paper #19, p. 63).

(6) Upon denial of a petition for reconsideration, the petitioner on October 18th, 1940, commenced an action under Section 4915 R. S. to authorize the Commissioner of Patents to issue to petitioner a certificate of registration of its trade-mark.

(7) Judgment was rendered on January 5, 1942, by the District Court, without opinion, in favor of respondent (Tr. 9).

(8) The judgment of the District Court was affirmed by the United States Court of Appeals for the District of Columbia. The opinion of the Court of Appeals is reported in 131 F. (2d) 446, and appears at pages 105 and 106 of the record transcript.

The Trial Below.

In the trial below, petitioner adduced full and complete evidence and proved adoption and use of the mark upon the goods continuously since the year 1935 (Tr. 41, 42), and the intent and purpose of the mark to show the origin or source of the goods in the petitioner company (Tr. 43). Petitioner also proved ownership of Plant Letters Patent No. 162, dated January 21, 1936, covering the particular variety of rose plant upon which the trade-mark in issue is used (Tr. 45), the wide propagation and distribution of the plants solely by petitioner and its licensees, throughout the United States (Tr. 45, 46), extensive advertising of the goods under the trade-mark name (Tr. 46), and the use and advertising of a separate generic or descriptive name "Red Hoover" by which the plants are known to the trade and to the public, apart from the trade-mark here in issue (Tr. 46), and the botanical classification of the variety as a Hybrid Tea Rose (Tr. 47).

Petitioner further proved by the testimony of two nationally outstanding and widely known nurserymen, Paul C. Stark of Stark Bros. Nurseries & Orchards Co., and Charles H. Perkins of Jackson & Perkins Co., the custom in the trade of applying trade-marks to and registering trade-marks for different varieties of plants in the same manner and for the same purposes as trade-marks are used and registered in other fields of commerce (Tr. 70, 71, 74-77, 81), and the recognition by the public and by the trade that petitioner's mark here in issue denotes origin of the goods

in petitioner (Tr. 68, 75). This testimony was fully corroborated by a grocer of long experience in respect to the custom of the grocery trade to use registered trade-mark names to identify and distinguish between different varieties of goods of different manufacturers commonly sold in grocery stores (Tr. 54 to 62 inclusive), such as "Ivory," "Swan," "P and G," etc. for different varieties of soaps; "Post Toasties," "Krumbles," "Pep," etc. for different varieties of cereals; "Raleigh," "Lucky Strike," "Herbert Tareyton," "Chesterfield," etc. for different varieties of cigarettes. Petitioner further proved the registration of the variety trade-marks "Richared," "Blackjon," "Seeando," etc. for different varieties of apples; and even "Texas Centennial" for a variety of wine.

Over 100 trade-mark registrations, selected at random, were produced in evidence by petitioner, said registrations covering the trade-marks registered for the different varieties of goods above mentioned and many others, these registrations having been granted throughout the period from the enactment of the Trade Mark Act of 1905 up to the present time.

Petitioner's evidence was wholly unrebutted and uncontradicted, since the only evidence offered by respondent consists merely of excerpts from the record in the Patent Office (Statement of the Trade-Mark Examiner and decisions of the Assistant Commissioner of Patents holding petitioner's mark to be unregistrable), and copies of three publications listing petitioner's roses by the trade-mark name here in issue and the patent number. Of these three publications, the two catalogs (Def. Exs. 3 and 4) described the plants as a sport of the variety "President Herbert Hoover."

The Decisions Below.

The District Court wrote no opinion, but found as matter of fact that the trial evidence established that "Texas Centennial" is the variety name of the rose covered by Plant Patent No. 162, and produced and sold by petitioner and by others under license from petitioner, and that this

name has not been applied to any other rose or plant. In spite of the total lack of rebuttal of petitioner's evidence of extensive registration and commercial use of trade-marks on particular varieties of goods, including plants, the Court then came to the conclusions that the words "Texas Centennial," being a variety name, are descriptive of roses to which these words are applied and therefore cannot be registered under the Trade Mark Act of 1905. The District Court further concluded that the word "Texas" and the outline of the map of the State of Texas are merely geographical, and because of petitioner's failure to disclaim them, petitioner is not entitled to registration under the Trade Mark Act of 1905, *although no requirement of such disclaimer had ever been made by either the Patent Office Examiner, or the Commissioner of Patents in the proceedings before the Patent Office.*

These findings were prepared by counsel for respondent without benefit of opinion or expression of views of the District Court as to the trial evidence, and were adopted by the Court in preference to the findings submitted by counsel for petitioner in opposition to respondent's findings. Thus, in effect, the findings adopted by the Court merely carry forward and reflect the erroneous views of the Patent Office, as advanced by the Trade Mark Examiner and the Assistant Commissioner of Patents during the prosecution of the application for registration, without regard to the contrary evidence adduced by petitioner before the trial court, and without regard for the principles of trade-mark law as established by this and other courts.

The United States Court of Appeals for the District of Columbia, on appeal to that Court, affirmed the decision of the District Court, and in so doing, expressed the view that *any name,* at first arbitrary and not descriptive, applied to a newly invented thing and to nothing else *for a considerable time,* would come to identify or describe the thing, as the word "cellophane" has come to describe a thing. In expressing this view, purporting to be based upon the rule of *Dupont Cellophane Co., Inc.* v. *Waxed Products Co.,*

Inc. (C. C. A. 2), 85 F. (2d) 75, 80, cert. den. 304 U. S. 575 (where the patent on the goods had expired and the goods had no other name than "cellophane", and this name had never been used in any other than a descriptive sense), the Court erroneously held that the statute forbids the registration of the words "Texas Centennial" unless an exception is read into the statute to the effect that words which are descriptive may nonetheless be registered when the applicant and his licensees are, for the moment, the only persons who produce the thing described. This holding was based upon the theory that to allow registration of a trademark such as here involved, would give to petitioner an unfair advantage and would tend to prolong petitioner's monopoly beyond the life of its patent, by making it difficult for a newcomer to break into the field, despite the fact that only petitioner here and its licensees now produce the patented goods under a patent *which has not yet expired,* and which is a far different situation from that considered by this Court in *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169, 185, 186, upon which the Court of Appeals relies.

These startling conclusions of the Court of Appeals are manifestly contrary to the accepted and usual course of judicial proceedings in which the findings of fact are based, and judgment entered, only on evidence adduced, and thus were reached under constraint or misapplication of a doctrine or rule of decision announced and applied by this Court in *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169, 185, 186, and variously applied by the lower courts, as in *Dupont Cellophane Co., Inc.* v. *Waxed Products Co., Inc.* (C. C. A. 2), 85 F. (2d) 75, 80, cert. den., 304 U. S. 575, and others.

In passing on the question of geographical character of certain features of petitioner's composite trade-mark, the Court of Appeals merely held that the addition of the geographical name "Texas" and map does not entitle the mark to registration, and to this extent the finding by the District Court to the effect that a disclaimer was prerequisite to registration of the composite mark as a whole, is not

definitely affirmed, thus leaving this particular issue unsettled.

II.

STATEMENT OF JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia was entered November 16, 1942, and a petition for rehearing was denied December 23, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of Feb. 13, 1925, Chapter 229, 43 Stat. 936, and under the rules of practice and procedure of this Court, and petitioner respectfully prays that this Honorable Court exercise its right of judicial discretion to review the judgment below which involves, among other things, an interpretation of a Federal Statute (The Trade Mark Act of February 20, 1905, 33 Stat. 727, 15 U. S. C. A., par. 85), and a matter of interest and importance to the public generally, as well as to the litigants involved herein.

III.

THE QUESTIONS PRESENTED.

The following basic questions are involved in this cause and are here presented to this Honorable Court for consideration:

(1) Whether or not petitioner's composite trade-mark is registrable under the Trade Mark Act of 1905, for a variety of goods, namely, a variety of plant (said trade-mark consisting of the words "Texas Centennial" imprinted upon a base having a rough outline approximating the map outline of the State of Texas, and said trade-mark being applied by petitioner in interstate commerce upon the goods described in its application for registration as roses, scions, and cuttings);

(a) Whether or not petitioner's trade-mark as a whole, and more particularly the word feature "Texas

Centennial," is descriptive of petitioner's roses in the sense of the inhibitions of Section 5 of the Trade Mark Act of 1905;

(b) Whether or not the District Court and the Court of Appeals below committed error in failing to find that the word feature "Texas Centennial" is not descriptive of petitioner's roses in the light of the evidence adduced before the trial court which clearly establishes that the generic or descriptive name of said roses is "Red Hoover" and was so recognized by the public and by the trade, not only prior to, but also concurrently with and subsequent to the adoption of the "Texas Centennial" mark, and the filing of application for registration of the latter;

(c) Whether or not, in the light of the long established practice of registering variety names of varieties of goods, the Trade Mark Act of 1905 prohibits registration of the composite trade-mark "Texas Centennial" and map outline, where the word feature "Texas Centennial" constitutes the variety name of the rose known to the trade and to the public by the generic or descriptive name "Red Hoover";

(d) Whether or not a trade-mark, originally arbitrary and not descriptive of a new product, becomes descriptive of such product, and therefore unregistrable under the Trade Mark Act of 1905, merely if the mark is applied for a considerable period to that product and to nothing else, when the proprietor and his licensees, for the moment, are the only persons who produce the goods to which the trade-mark is applied;

(e) Whether or not the period from petitioner's commencement of use of its trade-mark in November 1935 up to the date of filing of application for registration on April 24, 1936, or to any other date established by the evidence in this case, may properly be considered as such a considerable period of use of the

mark upon the particular goods, and upon nothing else, as to presume or imply, without positive proof, the acquisition of descriptiveness inhibited by the Act;

(f) Whether or not a trade-mark originally arbitrary and not descriptive, loses its trade-mark significance when listed in a catalog or catalogs of the proprietor or his licensees.

(2) Whether or not the Trade Mark Act of 1905 prohibits registration of a trade-mark where the application for registration is filed before the grant or expiration of the patent upon the goods:

(a) Whether or not registration of petitioner's trade-mark during the life of its patent, granted after adoption of the mark and filing of application for registration, would unreasonably or unfairly prolong petitioner's monopoly beyond the life of the patent, where the trade-mark was originally arbitrary and not descriptive, and the goods were originally and are concurrently known by a separate generic trade name.

(3) Whether or not a disclaimer of a geographical feature or features of a composite trade-mark is an essential prerequisite to registration of such composite mark as a whole under the Trade Mark Act of 1905:

(a) Whether or not the decision of this Court in *Estate of P. D. Beckwith* v. *Commissioner of Patents*, 252 U. S. 538, approving of voluntary disclaimers in lieu of physical obliteration of disclaimed features from the drawings of trade-mark applications, must be construed as compelling entry of disclaimers of all descriptive or geographical features of trade-marks as a prerequisite to registration under the Trade Mark Act of 1905, when said Act itself contains no provision for or requirement of such disclaimers.

(4) Whether or not the findings below reflect the facts to a degreee that is sufficient to support the judgment below in the light of all of the evidence and the pertinent principles of law.

(5) Whether or not there was a sufficient compliance with Rule 52(a) of the Federal Rules of Civil Procedure in the adoption by the District Court of findings prepared by counsel for respondent, without benefit of any expression, either oral or written, of views of the Court as to the evidence or principles of law justifying a judgment for respondent.

IV.

STATUTE INVOLVED.

The portion of Section 5, involved here, of the Trade Mark Act of February 20, 1905 (As Amended), 33 Stat. 727, 15 U. S. C. A. 85, reads as follows:

> "Sec. 5. U. S. C., title 15, sec. 85. That no mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade-mark on account of the nature of such mark unless such mark—
>
> (a) Consists of or comprises immoral or scandalous matter.
>
> (b) Consists of or comprises the flag or coat of arms or other insignia of the United States or any simulation thereof, or of any State or municipality or of any foreign nation, or of any design or picture that has been or may hereafter be adopted by any fraternal society as its emblem, *or of any name, distinguishing mark, character, emblem, colors, flag, or banner adopted by any institution, organization, club, or society which was incorporated in any State in the United States prior to the date of the adoption and use by the applicant: Provided, That said name, distinguishing mark, character, emblem, colors, flag, or banner was adopted and publicly used by said institution, organization, club, or society prior to the date of adoption and use by the applicant: Provided,* That trade-marks which are identical with a registered or known trade-mark owned and

in use by another and appropriated to merchandise of the same descriptive properties, or which so nearly resemble a registered or known trade-mark owned and in use by another and appropriated to merchandise of the same descriptive properties as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers shall not be registered: *Provided*, That no mark which consists merely in the name of an individual, firm, corporation, or association not written, printed, impressed, or woven in some particular or distinctive manner, or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term, shall be registered under the terms of this Act; . . . ."

V.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The discretionary power of this Court to grant a writ of certiorari is invoked upon the following grounds as set forth in Rule 38 of the rules of this Court:

(1) That the United States Court of Appeals for the District of Columbia, in holding petitioner's variety trade-mark to be unregistrable, has decided a question of general interest and importance to a large industry (plant industry) and to the general public, and which decision casts a cloud on many variety trade-mark registrations granted by the United States Patent Office previous to this decision, which registrations have been issued for varieties of goods not only in the field of plant life, but also in numerous other fields of commercial enterprise.

(2) That the United States Court of Appeals for the District of Columbia has, in denying petitioner's right to registration, decided a question of substance relating to the Federal Trade Mark Act of 1905, which has not been but which should be settled by this Court. (This is the first case, as far as petitioner is aware, in which a court has held,

before expiration of the patent, that a trade-mark applied to a patented product, loses its trade-mark significance by exclusive use on such product alone, and upon nothing else.)

(3) That the United States Court of Appeals for the District of Columbia, in holding petitioner's trade-mark to be unregistrable, has misunderstood and misapplied the doctrine of *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169, 185, 186, and *Dupont Cellophane Co., Inc.* v. *Waxed Products Co., Inc.* (C. C. A. 2), 85 F. (2d) 75, 80, cert. den. 304 U. S. 575, (in view of the fact that these cases concern the validity of a *registered* trade-mark *after* expiration of the patent on the goods to which the registed mark had been applied, and therefore do not constitute any authority for prohibiting registration of a trade-mark *before* the grant or expiration of the patent when the mark admittedly might properly have been held to be arbitrary and not descriptive at the time of adoption of the mark and filing of application for registration prior to issuance of the patent on the goods).

(4) That the United States Court of Appeals for the District of Columbia, in construing the Trade Mark Act of 1905 to forbid registration of petitioner's trade-mark (notwithstanding the admission by the Court that the mark might properly have been held to be "originally arbitrary"), has decided an important question of Federal law in conflict with former decisions of this Court,[1] in conflict with the decisions of other Circuit Courts of Appeals,[2] in

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[1] (Singer Mfg. Co. v. June Mfg. Co., 163 U. S. 169, 185, 186; Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251; Menendez v. Holt, 128 U. S. 514; Lawrence Mfg. Co. v. Tennessee Mfg. Co., 138 U. S. 537; Estate of P. D. Beckwith v. Commissioner of Patents, 252 U. S. 538.)

[2] (Dupont Cellophane Co., Inc. v. Waxed Products Co., Inc. (C. C. A. 2), 85 F. (2d) 75, 80, cert. den. 304 U. S. 575; President Suspender Co. v. Macwilliam (C. C. A. 2), 238 Fed. 159, cert. den. 343 U. S. 636; Sawyer v. Kellogg (New Jersey), 7 Fed. 720; Batcheller v. Thompson (C. C. A. 2), 93 Fed. 669; In Re Pitney-Bowes Postage Meter Co. (App. D. C.) 6 F. (2d) 717.)

conflict with the Trade Mark Act of 1905, and in conflict with the practice of the Patent Office throughout the period from the enactment of the Trade Mark Act of 1905, up to the present date.

(5) That the United States Court of Appeals for the District of Columbia has based its decision upon an erroneous presumption of descriptiveness and loss of trade-mark significance of petitioner's mark, and/or not upon evidence before it on the substantive issues of the case, and has in that respect so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

(6) That the United States Court of Appeals for the District of Columbia has failed to recognize and determine the issue brought to that Court, involving the question of sufficiency of compliance with Rule 52(a) of the Federal Rules of Civil Procedure, in respect to the adoption by the District Court below of findings prepared by counsel for respondent without benefit of any written or oral opinion of the Court, and without any other expression of views of the Court as to any evidence in the case upon which the findings so adopted are properly supported, and in that respect, the proceedings below so far departed from the accepted and usual course of judicial proceedings, condemned in *United States* v. *Forness* (C. C. A. 2), 125 F. (2d) 928, as to call for an interpretation by this Court of the meaning and intent of said Rule 52(a), in the exercise of this Court's power of supervision.

Wherefore, your petitioner, being without other effective remedy, prays that a writ of certiorari under Section 240(a) of the Judicial Code as amended by the Act of Feb. 13, 1925, be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, commanding said Court to certify and send to this Court a full and complete transcript of the record and all the proceedings of said United

States Court of Appeals for the District of Columbia had in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the United States Court of Appeals for the District of Columbia may be revised and reversed; and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate and just.

Dated, February 17, 1943.

DIXIE ROSE NURSERY,

By HARRY C. ROBB,
JOHN F. ROBB,
HARRY C. ROBB, JR.,
Attorneys for Petitioner.

District of Columbia, ss:

Harry C. Robb, John F. Robb, and Harry C. Robb, Jr., being duly sworn, depose and say that they are the attorneys for the petitioner herein; that they prepared the foregoing petition; that the allegations thereof are true as they verily believe, and that the foregoing petition is well founded in point of law and is not filed for delay.

HARRY C. ROBB,
JOHN F. ROBB,
HARRY C. ROBB, JR.

Subscribed and sworn to before me this 17th day of February, 1943.

CHRISTIE H. FESLER,
Notary Public.

(Seal)

My commission expires Oct. 15, 1943.